

REMARKS

This application has been reviewed in light of the Office Action dated February 8, 2007. Claims 1, 2, 4-11, and 38-46 are presented for examination. Claims 1 and 38 are in independent form. Favorable reconsideration is requested.

Applicants note with appreciation the indication that claims 8 and 43 would be allowable if rewritten so as not to depend from a rejected claim, and with no change in scope. These claims have not been so rewritten because, for the reasons given below, the respective base claim of each is believed to be allowable.

Claims 9-11 and 38-46 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

The claims have been carefully reviewed and amended as deemed necessary to ensure that they conform fully to the requirements of Section 112, second paragraph, with special attention to the points raised on page 2 of the Office Action. Specifically, claims 9 and 44 have been amended to depend from claims 8 and 43, respectively, which provides proper antecedent basis for the term "the first length". Claim 38 has been amended to recite that the adjustment portion of the shaft comprises external threads. It is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

Claims 1, 2, 4-7 and 38-42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,255,485 (Lemke et al.).

Applicants respectfully traverse this rejection for the following reasons.

Claim 1 is directed to an adjustable orthopedic tool. The tool comprises a shaft portion having first and second ends and a longitudinal axis, an adjustment portion and a fastener receiving portion. The first end comprises a cutting portion configured to drill a hole in bone, and the second end configured to be coupled to a source of rotational motion. The tool further comprises a fastener engaging portion, and an adjustment mechanism mounted on the shaft and configured to allow the user to vary a distance between the cutting portion and the fastener engaging portion. The fastener receiving portion is configured to receive at least a portion of a cannulated fastener thereon. The fastener engaging portion is configured to rotationally couple the tool to a driving portion of the cannulated fastener to transmit rotational motion thereto, and the adjustment mechanism is selectively movable along the longitudinal axis of the shaft to allow the tool to accept fasteners having different lengths.

The adjustment portion of the shaft further comprises external threads and the adjustment mechanism further comprises internal threads. The threads are engageable to allow the shaft and mechanism to be moved axially along a longitudinal axis of the shaft by rotating the pieces with respect to each other.

Noted features of the adjustable orthopedic tool are that the shaft portion has an adjustment portion comprising external threads and that the adjustment mechanism has internal threads, where the threads are engageable allowing the shaft and mechanism to move axially along the longitudinal axis of the shaft by rotating the pieces with respect to each other.

In the Office Action, the Examiner identifies elements 104 and 116 of the Lemke tool as equating to the adjustment mechanism or portion mounted on the shaft. Applicants respectfully disagree. The Lemke tool includes a casing 104 and a drive shaft 106. The casing 104 includes a polygonal head 102, a tubular body, a cap 108, and casing body 105. Casing body 105 is cylindrical having an internal chamber 110 with end portions being threaded. End cap 108 is similarly threaded. Element 116 of the Lemke tool is a bushing 116 that includes an interior polygonal interior passage. Bushing 116 also has exterior threads for engaging the threads on the end cap 108 and the casing body 105, securing the bushing to the top of the casing 104 (see col. 6, line 50, to col. 7, line 3).

A drive shaft 106 of the Lemke tool, which the Examiner equates to the shaft of claim 1 is received through a chamber 109 of cap 108, passageway 117 of bushing 116 and chamber 110 of casing body 105. Shaft 106 is adapted for axial movement relative to the casing 104 between retracted and extended positions. In the retracted position, a polygonal portion 124 of drive shaft 106 is seated within passage 117 of bushing 116. When rotational movement is imparted to the drive shaft 106 by drill 200 this rotational movement is concomitantly imparted to casing 104 by polygonal portion 124 and bushing 116. In the extended position, the polygonal portion 124 of shaft 106 is forward of bushing 116 and disengaged therefrom, such that tip 130 extends through bore 103 of head 102. With the polygonal section 124 unseated from bushing 116, casing 104 is effectively rotationally decoupled from shaft 106, allowing the shaft 106 to rotate independently of casing 104. (see col. 7, line 47, to col. 8, line 2)

As is evident from the above description of the Lemke tool, the shaft 106 does not have external threads that are engaged with an adjustment mechanism. Further, the Examiner

asserts that elements 104 and 116 are mounted on shaft 106. This is simply not the case. Claim 1 further recites that the threads of both the adjustment portion and adjustment mechanism allow the shaft and mechanism to be moved axially along a longitudinal axis of the shaft by rotating the pieces with respect to each other. During operation of the Lemke tool, the bushing 116 and casing 104 do not rotate with respect to each other. The bushing 116 and casing 104 rotate in unison with each other when the shaft is in the retracted position, and do not rotate when the shaft is in the extended position.

As is evident, the Lemke tool fails to disclose all the structural elements of the adjustable orthopedic tool of claim 1. Applicants submit that nothing has been found in Lemke et al that teaches or suggests the adjustment portion of the shaft further comprises external threads and the adjustment mechanism further comprises internal threads, the threads are engageable to allow the shaft and mechanism to be moved axially along a longitudinal axis of the shaft by rotating the pieces with respect to each other, as recited in claim 1.

Accordingly, Applicants submit that claim 1 is not anticipated by Lemke et al., and respectfully request withdrawal of the rejection under 35 U.S.C. § 102(b).

Claim 38, the other independent claim, is also directed to an adjustable orthopedic tool. The tool includes a shaft portion having first and second ends and a longitudinal axis, an adjustment portion comprising external threads and a fastener receiving portion. The first end comprises a cutting portion configured to drill a hole in bone, and the second end configured to be coupled to a source of rotational motion. The tool further includes a fastener engaging portion, and an adjustment mechanism mounted on the shaft and configured to allow the user to vary a distance between the cutting portion and the fastener engaging portion. The fastener receiving portion is configured to receive at least a portion of a cannulated fastener thereon and the fastener engaging portion is configured to rotationally couple the tool to a driving portion of the cannulated fastener to transmit rotational motion thereto. The adjustment mechanism is selectively movable along the longitudinal axis of the shaft to allow the tool to accept fasteners having different lengths. Movement of the adjustment mechanism adjusts the distance between the fastener engaging portion of the adjustment mechanism and the cutting portion of the shaft. The adjustment mechanism comprises at least first and second sleeves, the first sleeve comprising inner threads configured to engage the external threads of the shaft and the fastener engaging portion disposed on the second sleeve.

Similar to claim 1, discussed above, the shaft of the adjustable orthopedic tool of claim 38 includes external threads which engage the inner threads of the adjustment mechanism. Thus, for reasons substantially similar to those discussed above with respect to claim 1, Applicants believe that claim 38 is clearly patentable over Lemke et al. Accordingly, Applicants request withdrawal of the rejection of this claim under 35 U.S.C. § 102(b).

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration or reconsideration, as the case may be, of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application. Should the Examiner have any questions or comments concerning this submission, he is invited to call the undersigned at the phone number identified below.

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Respectfully submitted,



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